

**RESPONSE TO PUBLIC COMMENTS ON
DRAFT LPDES PERMIT NO. LAG480000 FOR
DISCHARGES FROM LIGHT COMMERCIAL FACILITIES**

AI 84683 / PER20060001

Date Prepared: June 22, 2006

SUMMARY: A copy of the draft reissuance permit was published in the American Press of Lake Charles, The Advocate of Baton Rouge, The Times-Picayune of New Orleans, The Advertiser of Lafayette, The Courier of Houma, The New-Star of Monroe, The Times of Shreveport, and The Town Talk of Alexandria on Thursday, May 4, 2006. In order to reach as many people as possible in the parishes most severely impacted by Hurricanes Katrina and Rita the public notice was published a second time on Thursday, May 4, 2006, in the American Press of Lake Charles, The Advocate of Baton Rouge, and The Times-Picayune of New Orleans. The public comment period for the draft permit was extended fifteen (15) extra days. The public notice was also published on the LDEQ Permits Public Web page at <http://www.deq.louisiana.gov/news/pubnotice/default.asp>.

The Water Permits Division received several comments related to the draft general permit. Copies of the official comments are attached for reference. The comments are neither quoted nor paraphrased below. The comments made in the attached comment letters are simply referenced and then addressed by the response.

Response to Written Comments Received from William L. Ray, Winnfield, LA:

The permit limits established in the permit are protective of surface water quality standards. Discharges are permitted to surface drainage systems or directly to water bodies. If an issue arises where a discharge might compromise a private water well, the applicant will either be directed to reroute the discharge to protect the private water well or the application will be denied. If an issue arises where more protective water quality based limits are required to protect the designated uses of the receiving water body then an individual permit containing the appropriate water quality based effluent limitations will be issued.

All permittees are required to meet the effluent limits for all permitted discharges and to treat wastewater, if necessary, to meet the permit limits.

This LPDES general permit is intended to regulate a variety of wastewater types and storm water discharges from certain types of facilities. Storm water permits regulate facilities in such a manner as to minimize contamination of surface runoff from equipment and materials handling and storage areas, and other areas of facilities where various industrial activities might expose precipitation or surface runoff to pollutants that could contaminate storm water. Although the LPDES program does not directly regulate the storage and/or disposal of radioactive material, there are other environmental protection programs that deal with such issues.

Response to Written Comments Received from Marylee M. Orr, Executive Director, Louisiana Environmental Action Network (LEAN):

There are two general approaches for developing technology-based effluent limitations for industrial facilities: (1) using national effluent limitations guidelines (ELGs) and (2) using Best Professional Judgment (BPJ) in the absence of ELGs. The intent of a technology-based effluent limitation is to require a minimum level of treatment for industrial/municipal point sources based on currently available treatment technologies while allowing the discharger to use any available control technique to meet the limitations. For industrial sources, the national ELGs are developed based on the demonstrated performance of a reasonable level of treatment that is within the economic means of specific categories of industrial facilities. Where national ELGs have not been developed, the same performance-based approach is applied to the categories of discharges. ELGs have not been developed for the categories of discharges included in the general permit; therefore, the incorporation of BPJ limits including technology based considerations is appropriate.

Technology based effluent limitations have been scientifically developed by the EPA and the state to establish a minimum level of pollutant controls for all point source dischargers of conventional pollutants, non-conventional pollutants, and toxic pollutants to provide equity among dischargers within categories. Some of the technology based permit limits proposed in the permit are the same as the BPJ technology based limits used by LDEQ in individual permits for more than 20 years. The Department has found that technology based limits for small discharges such as those regulated by LAG480000 have been sufficient to protect in-stream water quality standards. The Department has found that facilities in compliance with the technology based permit limits that are proposed in LAG480000 have not resulted in non-compliance of the designated uses of the receiving water bodies. A site-specific anti-degradation determination is made during the NOI review process for site-specific permit authorization, and could result in an individual permit being issued to any facility where it is determined that water quality based permit limits are required to satisfy anti-degradation regulations. The effluent limits established in the general permit allow low-volume flows of discharges that are de minimis in nature. Systematic in-stream water quality monitoring indicates that compliant discharges covered by LPDES general permits are protective of in-stream water quality standards.

Coverage under this permit is not automatic upon submission of the NOI to the Department. Coverage is granted upon written notification by the Department that the facility has been determined to be eligible for coverage under the general permit. During the NOI review process, if it is discovered that water quality based effluent limitations are more appropriate for a particular discharger than the technology based permit limits that discharger will not be issued permit coverage under this general permit.

303(d)-listed streams are listed on a pollutant by pollutant basis. NOIs submitted for permit coverage for discharges to 303(d)-listed streams are carefully evaluated to determine which pollutant(s) is causing the impairment, what pollutants are contained in the potential discharger's effluent, and if permitted discharges from the facility would be protective of in-stream water quality standards. Coverage under this general permit will not be granted to a

facility whose discharges are identified during the NOI review process as having the potential to cause or contribute to the violation of an in-stream water quality standard.

Should a future TMDL require more stringent limitations for some facilities already covered by this general permit, individual permits will be issued to those facilities in that TMDL-limited stream segment and coverage under this general permit will be terminated. Likewise, should it be determined during the NOI review process, or by information obtained from DEQ surveillance staff, or by the receipt of a complaint from the public that more than one of the facilities covered by this general permit were having a cumulative impact on a receiving waterbody, then individual permits will be issued to the facilities of concern that contain more stringent water quality based limits.

When a TMDL is established for a pollutant that is contained in one or more general permits, the discharges covered under those general permits are included in the Waste Load Allocation for the specific pollutant when determining the TMDL for the pollutant. In the absence of a TMDL, the technology based permit limits that are established in the permit are scientifically established such that effluent discharges are treated to levels that do not violate water quality standards. The stipulations placed on the temperature are based on the temperature criterion listed in LAC 33:IX.1113.C.4 and is consistent with requirements found in previously issued LPDES permits. Temperature is included in the permit as "Report" in order to obtain information that will be used in the future development of TMDLs and wasteload allocations for various waterbodies.

The monitoring requirements contained in this permit are consistent with those established in other general permits for similar wastewater types and in individual permits and have been adequate to monitor facility permit compliance with permit limits.

Regulations promulgated at LAC 33:IX.2707.A/40 CFR Part 122.44(a) require technology based effluent limitations to be placed in LPDES permits based on effluent guidelines where applicable, on BPJ (best professional judgment) in the absence of guidelines, or on a combination of the two. Effluent guidelines have not been promulgated for the types of discharges that are covered by this permit, so limitations were determined based on BPJ and on previously issued permits for similar discharges. Mass limits are often used in industrial permits where effluent guidelines have been promulgated and when water quality based limits are imposed in permits. Concentration limits are appropriate where flow is variable in nature. Because of the intermittent or non-continuous nature of discharges that may be authorized under this general permit, the effluent limitations for discharges are expressed in units of concentration.

The Minimum Quantification Level (MQL) is defined as the lowest concentration that can be reliably quantified with specified limits of precision and accuracy during routine laboratory operating conditions. The MQL for Benzene is 10 ug/l. Any concentration that is reported below the MQL is not scientifically reliable and thus unenforceable; therefore EPA and LDEQ allow those results to be reported as 0. For data collection purposes, both the EPA and LDEQ are interested in collecting accurate, representative data that reflects scientifically defensible testing protocols.

Facilities that are covered under the current version of the permit need not reapply for coverage under the reissued permit. When a TMDL for a pollutant is calculated for a receiving stream the current discharges into the stream are considered. If it is determined that a facility permitted under a general permit is no longer eligible to discharge under that general permit due to TMDL issues appropriate action will be taken to terminate general permit coverage (See Permit Section F).

Often individual permits with the same effluent limitations as this general permit are issued to a facility that is otherwise eligible for coverage under the general permit simply to include requirements that the facility conduct self-monitoring more frequently than may otherwise be allowed in the general permit. Allowing alternate monitoring schedules will allow those otherwise eligible facilities to be covered under the general permit while requiring more frequent self-monitoring than most facilities covered under the general permit. This alternative allows the Department to more closely monitor a facility's compliance without undertaking the more time and resource consuming process of issuing an individual permit to the facility.

Some individual permits are issued to facilities that are otherwise eligible for coverage under this general permit simply because they have the potential to discharge more than 5,000 GPD of treated sanitary wastewater. When it is determined that sanitary wastewater discharges of less than 25,000 GPD from a facility will be in compliance with water quality standards or applicable TMDLs if permitted under the general permit, and the facility is otherwise eligible for coverage under this general permit, general permit coverage can be issued to the facility.

Although the NOIs do undergo a detailed review process to determine site-specific permit applicability, the availability of this general permit does streamline the permit issuance process. It eliminates the time that a permit writer spends on actually writing an individual permit for each of the minor facilities that are eligible for coverage under the general permit. It minimizes the time that supervisors and managers must spend in reviewing each individual permit. It also eliminates the public notice requirement for facilities whose discharges typically have de minimis impacts on receiving streams which decreases the length of time a permit writer must devote to issuing each permit. In summary, the general permit is a more efficient way of permitting certain minor industrial facilities that generate common types of incidental, low-potential wastewaters, which allows the Department to devote more resources to evaluating permit applications for individual permits for industrial facilities with discharges that require more regulatory oversight in order to assure that the health, safety and welfare of the people and biota of Louisiana are protected. General permits also ensure consistency of permit conditions for similar types of facilities and/or discharges that are de minimis in nature. For these reasons, general permits are provided for in the EPA and state regulations. It should be noted that the EPA has concurred with the applicability of this general permit and with LDEQ's need to have a general permit available to consistently regulate the applicable facilities and to issue timely permit coverage to facilities that are determined to be eligible for coverage under the general permit system.

The Notices of Intent for all LPDES general permits undergo a detailed review to ascertain that the receiving water does not require that a permit be issued that contains more stringent water quality based permit limits. Section G of the permit states "... measures can be taken by the

permitting authority to prohibit any discharge that is not protective of state water quality standards.”

Facilities whose storm water discharges are automatically authorized under this general permit are not required to submit their storm water pollution prevention plans (SWPPP) to LDEQ unless specifically instructed to do so. The permitted facilities are required to have their SWPPP on-site and updated as required by the permit. The adequacy of the SWPPP can be reviewed by our surveillance staff when they conduct a permit compliance inspection at the permitted facility, and the facility may be referred to enforcement if a SWPPP has not been developed and implemented as required by the permit. This is the most appropriate way to handle SWPPPs. It allows the inspector to determine if the SWPPP is appropriate for the site and if appropriate BMPs are utilized at the facility. There are other compliance documents that must be completed periodically and maintained on-site with the SWPPP. An on-site facility inspection is the most appropriate means to determine if the permittee's SWPPP adequately addresses all of the storm water permit requirements. The current version of the general permit that expires July 31, 2006, also allowed the permit writer to automatically authorize storm water permit coverage under the permittee's site-specific LAG48 permit.

Item #8 on Page 4 of the Fact Sheet is a standard statement that is used in LPDES general permits and is used as a warning to applicants that they will not be authorized under the general permit if their facility discharges any type of wastewater that is not specifically regulated by the general permit. The permit writer uses the NOI and any other means necessary, including site visits, to understand the activities that occur at the facility; the processes that produce waste and/or wastewater; wastewater treatment systems utilized at the facility; and the potential for storm water contamination to determine if pollutants are generated that are not intended to be regulated by the general permit. If it is determined that the facility generates pollutants not intended to be regulated by this general permit, the facility may be eligible for coverage under a different LPDES permit.

Coverage under this particular general permit is not available to Publicly Owned Treatment Works (POTWs) where sewage from off site sources are accepted and treated by a publicly owned treatment facility. The Department has other types of permits available to POTWs that more appropriately address their facilities and discharges. Some publicly owned buildings such as DOTD maintenance barns or city/parish maintenance buildings may be eligible for coverage. Sanitary wastewater discharges from individual treatment plants and/or oxidation ponds at facilities classed as a Light Commercial Facility are eligible for coverage under this permit. Regulations found at LAC 33:IX.711.D specify that oxidation ponds may be considered as equivalent to secondary treatment and allows discharges up to 135 mg/l (7-day average) TSS from an oxidation pond.

There is no scientific basis for generally excluding Outstanding Natural Resource Waters and 303(d)-listed waters from receiving permitted discharges; however, extra scrutiny is given to NOIs for discharges into such water bodies. Discharges may be permitted to Outstanding Natural Resource Waters provided the discharges do not result in the degradation of the water body so that it no longer meets the Outstanding Natural Resource Waters designation. 303(d)-listed streams are listed on a pollutant by pollutant basis. NOIs submitted for permit coverage for discharges to 303(d)-listed streams are carefully evaluated to determine which pollutant(s)

is/are causing the impairment, what pollutants are contained in the potential discharger's effluent, and if permitted discharges from the facility would be protective of in-stream water quality standards. Coverage under this general permit will not be granted to a facility with discharges that have the potential to cause or contribute to the violation of a water quality standard.

A maximum pH of 11 standard units may be allowed for discharges of boiler water treatment blowdown and boiler blowdown wastewater from boilers that are used specifically for climate control. When determining if a facility is eligible for the higher pH limit a review will be conducted to determine the in-stream pH standard, the expected volume of the discharge, how far the discharge is from the receiving stream, and the pathway of flow to the receiving stream. The permit Statement of Basis will elaborate as to whether the facility is determined to be eligible for the higher pH limit for discharges under Schedule F or Schedule G.

No discharge will be permitted that is determined to have the potential to violate state water quality standards. This general permit is not intended to be available to facilities that require more stringent water quality based effluent limitations. The Department will continue to utilize individual permits to address these sensitive areas. In the absence of industry-specific effluent limitations or technology-based effluent limitations for particular discharges, the regulations allow the use of Best Professional Judgment (BPJ) to regulate discharges to surface waters.

The technology based permit limits and the narrative permit requirements were developed such that under normal circumstances in-stream water quality standards will be protected. A site-specific determination of permit eligibility and potential negative impacts on water quality will be made when each NOI is reviewed.

The antidegradation analysis will be conducted when an NOI is received for site specific permit coverage and the permit writer determines which basin subsegment the facility will discharge to and the designated uses of the receiving stream. In a very limited number of cases where a facility might discharge either boiler water treatment blowdown or boiler blowdown from an office building, office park, warehouse, shop or similar building where the boiler is used for climate control purposes (heating and cooling a building) a site-specific determination will be made to ascertain that a higher pH limit can be permitted. In making the determination the permit writer will consider the volume of the proposed discharge; the distance from the receiving water body; the assimilative capacity of the water body; and the potential for neutralization before reaching the receiving stream before permit coverage is granted. Any facility determined eligible for coverage under the general permit must comply with both the numeric effluent limitations and the narrative requirements of the permit which were developed to ensure that discharges in compliance with the permit will protect the designated uses of that specific water body. The Statement of Basis that is developed when site-specific coverage is granted provides information related to the location of the facility, path of the effluent, and receiving stream information.

LPDES effluent limitations and narrative requirements are designed to ensure that surface water bodies remain fishable and swimmable, although some water bodies may not be meeting those standards for various natural or manmade reasons. The technology based permit limits and the narrative permit requirements were developed to ascertain that water quality standards of

receiving streams are protected such that designated uses continue to be met. A site-specific determination of permit eligibility is made when an NOI is reviewed. Permitted discharges that are in compliance with the permit should not affect the in-stream standards of the receiving stream. Facilities that are granted coverage under the general permit are required to conduct self-monitoring in accordance with the specific requirements of the outfalls contained in Appendix A of their cover letter granting authorization to discharge under the general permit. DMRs must be submitted to the Department to report the results of self-monitoring events. The DMRs are one of the mechanisms that the Department utilizes to determine if a facility is in compliance with permit requirements. If a problem arises that appears to be related to a facility covered by this general permit, the problem would be a facility-specific problem related to permit non compliance and that issue would be dealt with appropriately. The facility would be forced to become compliant or permit coverage would be revoked. It should be noted that a discharge from a light commercial facility that results in permit noncompliance does not generally mean that a water quality standard has been violated.

The Department has extensive Surveillance Division staff who are charged with inspecting facilities and responding to complaints related to water quality issues. Surveillance staff also conduct in-stream water quality sampling to determine if water bodies in the State are meeting the State Water Quality Standards. If water quality impairments are discovered during an in-stream assessment then the source of the pollutant causing the impairment is identified. These extensive studies have not demonstrated that any of our LPDES general permits are allowing discharges that are responsible for causing a violation of in-stream water quality standards. Any problems that might arise would be a facility-specific problem, not problems caused by permitted discharges that are in compliance with a general permit. Water quality issues that have developed in past years are often related to unpermitted discharges, unregulated storm water runoff, atmospheric deposition, drought conditions, crop irrigation/production, and a variety of unregulated sources.

In order to minimize the permit backlog it is important that the Department utilize LPDES general permits to regulate certain categories of discharges from minor sources whose discharges are considered de minimis. Draft General Permits are available for public comment. During the public comment period the Department receives comments related to the adequacy of the general permit to regulate the types of facilities for which it was drafted. Once a Final General Permit is issued, coverage is then granted to facilities who are determined eligible for coverage after an extensive review of each facility specific NOI that is submitted for general permit coverage. Under normal circumstances a facility specific public notice is not issued prior to authorizing coverage under a general permit. However, if the Department becomes aware that there is significant public interest in a facility that has applied for general permit coverage it may public notice the intent to cover the facility under a general permit if the Department becomes aware of the public interest prior to granting authorization to discharge to the facility.

The availability of general permits is an important tool used in the LPDES program to more efficiently permit certain minor industrial facilities that generate common types of incidental, low-potential wastewaters. The availability of a general permit for certain de minimis discharges from Light Commercial Facilities allows the Department to devote more resources to evaluating permit applications for individual permits for industrial facilities with discharges

that require more regulatory oversight in order to assure that the health, safety and welfare of the people are protected. General permits also ensure consistency of permit conditions for similar types of facilities and/or discharges that are de minimis in nature.

The Department has considered the comments on the draft permit and the request for a public hearing to elaborate on the issues raised by the commenters. The Department has addressed in this document the issues raised in the public comments, and has decided that a public hearing to further discuss these issues is not warranted.

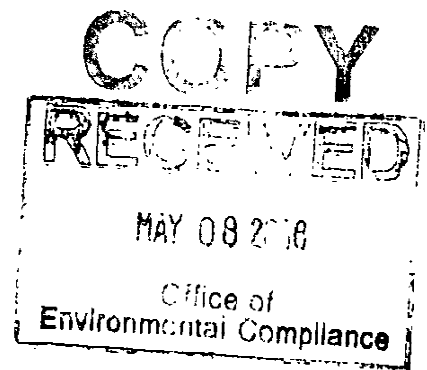
Response to Written Comments Received from Adam Babich, Counsel for the Louisiana Environmental Action Network:

Comments submitted in error. Comment letter was replaced by a letter submitted by Marylee Orr on June 20, 2006.

FINAL ACTION:

Chapter 25 of LAC 33:IX of the state regulations define wastewater and storm water discharges that require permits. As an NPDES-authorized state, the Louisiana Department of Environmental Quality (LDEQ), Office of Environmental Services is authorized to issue LPDES permits. Conditions in the final permit conform to the requirements defined in federal and state regulations. The Water Permits Division has decided to reissue general permit LAG480000 to regulate discharges from light commercial facilities in accordance with current federal and state regulations for such discharges.

May 01, 2006



Attn: Ms Soumaya Ghosh (LDEQ)
Public Participation Group
P.O. Box 4313
Baton Rouge, LA 70821-4313

Re: Draft Water Discharge general Permit light Commerical Facilities

AI# 84683 ✓

Permit# LAG480000

Activity# GEN20060001

original to JCW

Sm
copy to PC/Ghosh
mc/g/baughman
Pub. Notification SL
5/11/06

Dear, Public Participation Group

Due to growing concerns for wetlands and usable water for citizens use drinking, bathing etc., I propose discharge activities expected to occur within this permit should have at least a (one thousand feet) distance from wetlands and private water wells.

Further I pray such discharges within this Activity have a waste-water treatment system to catch these discharges like that of a Auto Car/Truck Washing service.

With the term(s) Vessel(s) / Pressure testing used in the permit, one might assume the Vessels, Tank, equipment may be related to the Oil and gas Processing industry. If this is the case, concerns with chemical residue and (TENORM) Technologically Enhanced Naturally Occurring Radioactive material arise.

I suggest used oil field / gas equipment removed from its intended place of use / service such as tanks / vessels / pressure vessels / drill pipe also have an (one thousand feet) distance from wetlands area and private water wells, and Vessels / tanks should be capped or covered where as rain fall etc., can not enter the vessels causing leaching into soil and ground water.

Thank you for your time and effort(s) in Environmental Protection,

William L. Ray

William J. Ray

3546 Hwy 156

Linnfield, LA 71483 Phone: (318) 727-5023

May 04, 2006

Attn: Ms. Soumaya Ghosn (LDEQ)
Public Participation Group
P.O. Box 4313
Baton Rouge, LA 70821-4313

Re: Draft Water Discharge general Permit Light Commercial Facilities

AI # 84683

Permit # LAC480000

Activity # GEN20060001

Dear, Public Participation Group

Due to growing concerns for wetlands and usable water for citizens use drinking, bathing etc., I propose discharge activities expected to occur with in this permit should have at least a (one thousand feet) distance from wetlands and private water wells.

Further I pray such discharges within this Activity have a waste-water treatment system to catch these discharges like that of a Auto car/truck washing service.

With the term(s) Vessel(s) / Pressure testing used in the permit, one might assume the Vessels, Tanks, equipment may be related to the Oil and gas Processing industry. If this is the case, concerns with chemical residues and (TENORM) Technologically Enhanced Naturally Occurring Radioactive material arise.

I suggest used oil field / gas equipment removed from its intended place of use / service such as tanks / vessels / pressure vessels / drill pipe also have a (one thousand feet) distance from wetlands area and private water wells, and Vessels / tanks should be capped or covered where as rain fall etc., can not enter the vessels causing leaching into soil and ground water.

Thank you for your time and effort(s) in Environmental Protection,

William L. Ray

William L. Ray

3546 Hwy 156

Winnfield, LA 71483 Phone: (318) 727-5063

Louisiana Environmental Action Network / LEAN



POST OFFICE BOX 66323 • BATON ROUGE LOUISIANA 70896 • (225) 928-1315 • FAX (225) 922-9247 • www.leanweb.org

June 20, 2006

Louisiana Department of Environmental Quality
Attn: Soumaya Ghosn
Public Participation Group
P.O. Box 4313
Baton Rouge, LA 70821-4313

Re: Draft General Permit for Discharges from Light Commercial Facilities

LACG480000, AI 84683

CORRECTION

Dear Ms. Ghosn:

Yesterday, the Louisiana Environmental Action Network (LEAN), submitted comments on the above referenced draft general permit for light commercial facilities. In addition, LEAN requested that the Tulane Environmental Law Clinic (TELC) submit comments on LEAN's behalf - which they did. However, a clerical error resulted in two comment documents being submitted on LEAN's behalf from TELC rather than one from each organization.

As it is the policy of each organization only to send out documents which have been reviewed and signed by their respective directors. One of those documents purported to be from TELC had not been cleared by that organization's director, Adam Babich and was inadvertently submitted on LEAN's behalf. Would you kindly replace the previous submission dated June 19, 2006 and signed by Marylee Orr with the correct approved version attached herein. We sincerely apologize for any inconvenience and confusion this clerical error may have caused you or your staff.

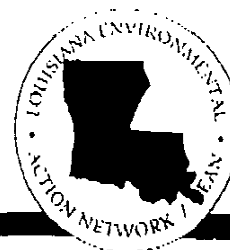
Signed,

Marylee Orr, Executive Director

Louisiana Environmental Action Network



Louisiana Environmental Action Network / LEAN



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June 19, 2006

Louisiana Department of Environmental Quality
Attn: Soumaya Ghosn
Public Participation Group
P.O. Box 4313
Baton Rouge, LA 70821-4313

Re: Draft General Permit for Discharges from Light Commercial Facilities
LAG480000, AI 84683

Dear Ms. Ghosn:

The following are comments from the Louisiana Environmental Action Network (LEAN) on the above referenced draft general permit for light commercial facilities.

LEAN is a statewide network of over one hundred member groups working to foster cooperation and communication between individual citizens and corporate and government organizations in an effort to assess and mend the environmental problems in Louisiana. LEAN's goal is the creation and maintenance of a cleaner and healthier environment for all of the inhabitants of this state. LEAN has been concerned about impacts to Louisiana's waters from wastewater discharges for many years, has made wastewater pollution a significant component of its work, and has participated in many related policy and legal matters.

A principal concern with this permit is that a number of other presumably "eligible" facilities currently discharge to receiving waters implicated by this permit, but the cumulative effects on these waterways have not been assessed. It is inappropriate to provide coverage under a general permit that contains only technology-based limits for certain pollutants and no limits for others to a facility that discharges to a receiving water whose current condition and characteristics are unknown.

LEAN has a number of concerns about the proposed draft general permit, including, in part, use of the general permit instrument, the adequacy of the general permit as drafted, facilities eligible for coverage under the draft permit, and insufficient public participation in facility-specific coverage decisions.

Inappropriateness of General Permit

1. Baseline Assessments for Receiving Waters are Needed

If a stream is 303d listed, and thus requires a total maximum daily load (TMDL) for a pollutant,



that pollutant cannot be added to it until that TMDL is completed. Page 8(d) of the fact sheet accompanying the permit application suggests that discharges of pollutants will be allowed even where there is no TMDL for them. Reference is made, on page 26 of the fact sheet, to "temperature requirements," but there is strong likelihood that water quality standards for temperature have not been set for all receiving waterways. There is scant attention paid to water quality standards in the form of TMDLs, yet 303(d) waters have not been excluded from the pool of potential receiving water bodies. TMDLs are only marginally addressed in the second paragraph of page 30. Without TMDLs, we do not understand how it can be known whether discharges will contribute to impairment. On page 32 of the fact sheet appears the statement, "[I]t will generally be assumed that discharges from facilities permitted under this general permit are consistent with approved TMDLs." This assumption makes us very uncomfortable and we request further explanation and discussion in a public comment forum.

2. Cumulative Impacts for Receiving Waters is Presently Unaddressed

We do not find sufficient monitoring proposed by the Louisiana Department of Environmental Quality (LDEQ) to be required of applicants in order to ensure that permit limits are met, that water quality standards are met in the receiving streams, that narrative and numeric criteria are met, and that existing uses are maintained.

On page 6 of the fact sheet appears a brief discussion of why concentrations only instead of concentrations and mass limitations or loads will be used in some cases. This is not acceptable, since no matter what the concentration, for some pollutants, there is a limit to how much the water body can assimilate. This limit depends on factors like flow, potential to settle, bioaccumulate, etc. Whether by applicable law or not, mass limitations are not required, they are strongly requested in this instance and we request an explanation of why they have been excluded here.

On page 23 of the fact sheet, LDEQ seems to arbitrarily allowing benzene concentrations of less than 10 micrograms/L to be reported as 0. If correct, this condition is intolerable. Benzene is a known human carcinogen and LDEQ should join LEAN in wanting to keep track of the cumulative impacts of these "small" concentrations.

This permit clearly states that dischargers covered under the current GP don't need to reapply because they will automatically be covered by the new GP (presumably for another 5 yrs). Is it correct then, that there is no consideration of whether conditions and stream health have changed in the receiving waterway? Finally, the section on page 9 (f) leads to confusion over how increased monitoring will be required for past violators if they are "rolled into" the new permit without any substantial review of their existing permit.

3. Required review of Alternatives under Section 401 of CWA

This new permit would allow a five-fold increase in discharges of sanitary wastewaters, again with no apparent justification other than "best professional judgment." At the top of page 8 of the accompanying fact sheet, a statement appears that "past experience" justifies increasing permitted discharges of sanitary wastewaters by five times. A substantive alternatives review as per section 401 might well provide contradictory indications and where discharges to Tier II waters are involved, is required by law.

Inadequacy of General Permit

1. Extensive Individual Analyses Needed

Many dischargers considered to be eligible for coverage need extensive individual analysis of appropriate effluent limits under federal law, thus negating any benefit of aggregating them into coverage under a general permit. It is difficult to understand how a general permit streamlines the process if LDEQ has to review each notice of intent (NOI) to see if the water body will be affected.

Under federal law, the permit must *explicitly* prohibit violations of water quality standards, but simply stating that water quality will not be violated does not make it so. The general permit restricts LDEQ's depth of review for individual water bodies for the entire suite of water quality standards.

Further, there is a need to review storm water pollution prevention plans (SWPPP) individually, and with public comment. Given that storm water is involved in this general permit, we expect to see current SWPPP's for each permitted facility.

2. Unclear Language for Protecting ONRWs and Covering POTWs

Publicly owned treatment works (POTWs) should be addressed by requiring that secondary treatment limits apply.

outstanding natural resource waters (ONRW) should be excluded from eligible receiving streams. On page 8 of 29 in the permit appears this language. "This general permit may not apply to: 3. discharges from facilities which are located in an environmentally sensitive area." LEAN wants LDEQ to ensure that permits granted will not be exempt from the requirements of RS 56:1849 and RS 56:1850 governing the management of Louisiana's Natural and Scenic Waterways, but the language here provides no indication of how this goal will be ensured.

3. Vague in Many Respects

Some of the Schedule A sanitary wastewater dischargers of less than 5,000 GPD may be publicly-owned. If so, federal regulations require monthly average biological oxygen demands (BOD) and total suspended solids (TSS) limits of 30mg/l. Also, for the 5-25,000 GPD (Schedule J), there should be limitations on stream size, flow, etc. 25,000 GPD can be a significant and overwhelming volume in a small receiving stream. Also, on page 12, it is unclear why there is a TSS limit of 135 mg/l. for facilities with oxidation ponds. These ponds also have to comply with the secondary treatment limits.

If the pH exception applies only to a small number of dischargers that will require thorough review, then these are not the type of discharges that should be covered by a general permit. We request further elaboration and specific discussion of the parameters and protocol involved in what constitutes a "thorough review." LEAN requests detailed specifics on how LDEQ will make these determinations. See pages 9 (g) and Pages 18-19 in particular.

Within the first paragraph of page 9 in the fact sheet, LDEQ seems to completely ignore the need for water quality-based standards in certain situations, and also say that technology-based standards don't exist for the covered discharges. Therefore, LDEQ will simply use best professional judgment on everything. This is unacceptable and woefully inadequate in applying water quality-based standards.

On page 9 of 22 within Part II of this draft permit, this statement appears, "Any noncompliance with the General or Numerical Criteria is not authorized under this permit." Whether or not it is specifically authorized by LDEQ, noncompliance is essentially unavoidable wherever numerical criteria have not been established for a receiving waterway.

4. Insufficient Requirements for Antidegradation Analyses

The permit should go through a full Tier 1 and Tier 2 antidegradation analysis, and the analysis must be so limited that it will not allow, through individual or cumulative activities, pollution that has not been shown to be insignificant. We must see it proven that conditions placed in the permit will assure that there will not be significant pollution from permitted activities.

The upper pH limit for certain types of boiler water is 11. From our research, a pH within the 6-9 range is acceptable - nothing else. This information alone should trigger a more site-specific analysis.

5. Insufficient Sampling Protocol to Confirm Assertions of Water Quality Protections

On pages 33 and 34 of the fact sheet, LDEQ makes several unsubstantiated statements that effluent limitations are sufficient to protect state waters, that water quality standards will not be violated, that 303d listed waters will not be impacted, and that designated uses will be protected. The document goes on to state that the current GP has not resulted in any degradation, but we have no indication of how this determination was established. Can it really be accurate that no water quality issues have developed since the last GP was issued in 2001? Reference is made to a "reasonable potential" analysis on page 34 of the fact sheet, but where is the actual analysis? We need to see it.

LDEQ, on page 30, states that limitations on this permit will protect water quality of all streams in the state, implying that water quality hasn't been affected since the last GP was issued and that only *de minimis* discharges are involved. However, the Agency has not provides any basis for these statements.

LDEQ has explicitly excluded discharges that would result in a violation of WQSs. Despite the Agency's assurance on page five that discharges allowed under this general permit are essentially harmless, "During the preparation of this permit, it has been determined that the discharges will have no adverse impact on the existing uses of the receiving water bodies," it is still unclear how the Agency will credibly determine whether water quality standards (WQS) are being violated.

6. Permits Must *Explicitly* prohibit violations of water quality standards

The legislative intent was to require more than a mere statement that WQSs will not be violated. The public is not comfortable with "faith-based permitting" where self-reporting in general terms is allowed to take the place of credible standards setting followed by thorough sampling and public reporting of all sampling results. It remains unclear how covered entities will determine whether WQSs are being violated.

The permit must explicitly prohibit violation of water quality standards. We expect a "reasonable potential" analysis of whether the discharge will lower WQSs. Louisiana also needs water quality-based effluent limitations (WQBELs), rather than technology-based ones. LDEQ should itself devise WQBELs rather than defaulting to only technology-based ones.

7. BULLET-IN: Compliance Measures and Protections

On page 27 (D) it is indicated that LDEQ proposes to automatically permit storm water discharges of facilities that get this GP. Then the facility has 60 days to submit a SWPPP which is supposed to demonstrate that WQSs will be met. Under what guidelines and authority does LDEQ propose to automatically issue the storm water permit without first reviewing the SWPPP?

How will LDEQ determine whether there will be an environmental risk that merits excluding a discharge? *See page 4 part (8)*. Just how will LDEQ analyze and quantify potential environmental impacts to the receiving waterways?

Lack of Opportunity for Public participation

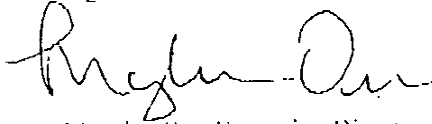
1. Public Comment Process Needs Attention

As has often been the case with permits submitted to LDEQ, there does not follow a sufficient public comment process complete with public scoping and a public comment process followed by an open meeting or hearing to discuss, address and review the comments submitted. We hereby request an improved public comment process for any future general permits and a public hearing to clarify the issues raised in LEAN's comments to permit LAG480000.

Conclusion

For these reasons and others, LEAN hereby objects to the issuance of this general permit and formally requests an in-depth public hearing to fully and adequately address all of our concerns expressed herein.

Signed,



Marylee Orr, Executive Director

Louisiana Environmental Action Network

Louisiana Environmental Action Network / LEAN



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June 19, 2006

Louisiana Department of Environmental Quality
Attn: Soumaya Ghosn
Public Participation Group
P.O. Box 4313
Baton Rouge, LA 70821-4313

**Re: Draft General Permit for Discharges from Light Commercial Facilities
LAG480000, AI 84683**

Dear Ms. Ghosn:

The following are comments from the Tulane Environmental Law Clinic on behalf of the Louisiana Environmental Action Network (LEAN) on the above referenced draft general permit for light commercial facilities.

LEAN is a statewide network of over one hundred member groups working to foster cooperation and communication between individual citizens and corporate and government organizations in an effort to assess and mend the environmental problems in Louisiana. LEAN's goal is the creation and maintenance of a cleaner and healthier environment for all of the inhabitants of this state. LEAN has been concerned about impacts to Louisiana's waters from wastewater discharges for many years, has made wastewater pollution a significant component of its work, and has participated in many related policy and legal matters.

A number of other "eligible" facilities discharge to receiving waters that have not been assessed. It is inappropriate to provide coverage under a general permit that contains only technology-based limits for certain pollutants and no limits for others to a facility that discharges to a receiving water whose current condition and characteristics are unknown.

LEAN has a number of concerns about the proposed draft general permit, including, in part, use of the general permit instrument, the adequacy of the general permit as drafted, facilities eligible for coverage under the draft permit, and insufficient public participation in facility-specific coverage decisions.

Inappropriateness of General Permit

1. **Baseline Assessments for Receiving Waters are Needed**



If a stream is 303d listed, and thus requires a TMDL for a pollutant, that pollutant cannot be added to it until that TMDL is completed. Page 8(d) of the fact sheet accompanying the permit application suggests that discharges of pollutants will be allowed even where there is no TMDL for them. Reference is made, on page 26 of the fact sheet, to "temperature requirements," but there is strong likelihood that water quality standards for temperature have not been set for all receiving waterways. There is scant attention paid to water quality standards in the form of TMDLs, yet 303(d) waters have not been excluded from the pool of potential receiving waterbodies. TMDLs are only marginally addressed in the second paragraph of page 30. Without TMDLs, we do not understand how it can be known whether discharges will contribute to impairment. On page 32 of the fact sheet appears the statement, "[I]t will generally be assumed that discharges from facilities permitted under this general permit are consistent with approved TMDLs." This assumption makes us very uncomfortable and we request further explanation and discussion in a public comment forum.

2. Cumulative Impacts for Receiving Waters is Presently Unaddressed

We do not find sufficient monitoring proposed by LDEQ to be required of applicants in order to ensure that permit limits are met, that water quality standards are met in the receiving streams, that narrative and numeric criteria are met, and that existing uses are maintained.

On page 6 of the fact sheet appears a brief discussion of why concentrations only instead of concentrations and mass limitations or loads will be used in some cases. This is not acceptable, since no matter what the concentration, for some pollutants, there is a limit to how much the waterbody can assimilate. This limit depends on factors like flow, potential to settle, bioaccumulate, etc. Whether by applicable law or not, mass limitations are not required, they are strongly requested in this instance and we request an explanation of why they have been excluded here.

On page 23 of the fact sheet, LDEQ seems to arbitrarily allowing benzene concentrations of less than 10 micrograms/l. to be reported as 0. If correct, this condition is intolerable. Benzene is a known human carcinogen and LDEQ should join LEAN in wanting to keep track of the cumulative impacts of these "small" concentrations.

This permit clearly states that dischargers covered under the current GP don't need to reapply because they will automatically be covered by the new GP (presumably for another 5 yrs). Is it correct then, that there is no consideration of whether conditions and stream health have changed in the receiving waterway? Finally, the section on page 9 (f) leads to confusion over how increased monitoring will be required for past violators if they are "rolled into" the new permit without any substantial review of their existing permit.

3. Required review of Alternatives under Section 401 of CWA

This new permit would allow a five-fold increase in discharges of sanitary wastewaters, again with no apparent justification other than "best professional judgment." At the top of page 8 of the accompanying fact sheet, a statement appears that "past experience"

justifies increasing permitted discharges of sanitary wastewaters by five times. A substantive alternatives review as per section 401 might well provide contradictory indications and where discharges to Tier II waters are involved, is required by law.

Inadequacy of General Permit

1. Extensive Individual Analyses Needed

Many dischargers considered to be eligible for coverage need extensive individual analysis of appropriate effluent limits under federal law, thus negating any benefit of aggregating them into coverage under a general permit. It is difficult to understand how a general permit streamlines the process if LDEQ has to review each notice of intent (NOI) to see if the waterbody will be affected.

Under federal law, the permit must *explicitly* prohibit violations of water quality standards, but simply stating that water quality will not be violated does not make it so. The general permit restricts LDEQ's depth of review for individual waterbodies for the entire suite of water quality standards.

Further, there is a need to review stormwater pollution prevention plans (SWPPP) individually, and with public comment. Given that stormwater is involved in this general permit, we expect to see current SWPPP's for each permitted facility.

2. Unclear Language for Protecting ONRWs and Covering POTWs

Publicly owned treatment works (POTWs) should be addressed by requiring that secondary treatment limits apply.

ONRWs should be excluded from eligible receiving streams. On page 8 of 29 in the permit appears this language, "This general permit may not apply to: 3. discharges from facilities which are located in an environmentally sensitive area." LEAN want LDEQ to ensure that permits granted will not be exempt from the requirements of RS 56:1849 and RS 56:1850 governing the management of Louisiana's Natural and Scenic Waterways, but the language here provides no indication of how this goal will be ensured.

3. Vague in Many Respects

Some of the Schedule A sanitary wastewater dischargers of less than 5,000 GPD may be publicly-owned. If so, federal regulations require monthly average BODs and TSS limits of 30mg/L. Also, for the 5-25,000 GPD (Schedule J), there should be limitations on stream size, flow, etc. 25,000 GPD can be a significant and overwhelming volume in a small receiving stream. Also, on page 12, it is unclear why there is a TSS limit of 135 mg/l. for facilities with oxidation ponds. These ponds also have to comply with the secondary treatment limits.

If the pH exception applies only to a small number of dischargers that will require thorough review, then these are not the type of discharges that should be covered by a general permit. We request further elaboration and specific discussion of the parameters and protocol involved in what constitutes a "thorough review." LEAN requests detailed specifics on how LDEQ will make these determinations. See pages 9 (g) and Pages 18-19 in particular.

Within the first paragraph of page 9 in the fact sheet, LDEQ seems to completely ignore the need for water quality-based standards in certain situations, and also say that technology-based standards don't exist for the covered discharges. Therefore, LDEQ will simply use best professional judgment on everything. This is unacceptable and woefully inadequate in applying water quality-based standards.

On page 9 of 22 within Part II of this draft permit, this statement appears, "Any noncompliance with the General or Numerical Criteria is not authorized under this permit." Whether or not it is specifically authorized by LDEQ, noncompliance is essentially unavoidable wherever numerical criteria have not been established for a receiving waterway.

4. Insufficient Requirements for Antidegradation Analyses

The permit should go through a full Tier 1 and Tier 2 antidegradation analysis, and the analysis must be so limited that it will not allow, through individual or cumulative activities, pollution that has not been shown to be insignificant. We must see it proven that conditions placed in the permit will assure that there will not be significant pollution from permitted activities.

The upper pH limit for certain types of boiler water is 11. From our research, a pH within the 6-9 range is acceptable - nothing else. This information alone should trigger a more site-specific analysis.

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On pages 33 and 34 of the fact sheet, LDEQ makes several unsubstantiated statements that effluent limitations are sufficient to protect state waters, that water quality standards will not be violated, that 303d listed waters will not be impacted, and that designated uses will be protected. The document goes on to state that the current GP has not resulted in any degradation, but we have no indication of how this determination was established. Can it really be accurate that no water quality issues have developed since the last GP was issued in 2001? Reference is made to a "reasonable potential" analysis on page 34 of the fact sheet, but where is the actual analysis? We need to see it.

LDEQ, on page 30, states that limitations on this permit will protect water quality of all streams in the state, implying that water quality hasn't been affected since the last GP was issued and that only *de minimis* discharges are involved. However, the Agency has not provides any basis for these statements.

LDEQ has explicitly excluded discharges that would result in a violation of WQSs. Despite the Agency's assurance on page five that discharges allowed under this general permit are essentially harmless, "During the preparation of this permit, it has been determined that the discharges will have no adverse impact on the existing uses of the receiving waterbodies," it is still unclear how the Agency will credibly determine whether WQSs are being violated.

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The legislative intent was to require more than a mere statement that WQSs will not be violated. The public is not comfortable with "faith-based permitting" where self-reporting in general terms is allowed to take the place of credible standards setting followed by thorough sampling and public reporting of all sampling results. It remains unclear how covered entities will determine whether WQSs are being violated.

The permit must explicitly prohibit violation of water quality standards (WQS). We expect a "reasonable potential" analysis of whether the discharge will lower WQSs. Louisiana also needs water quality-based effluent limitations (WQBELs), rather than technology-based ones. LDEQ should itself devise WQBELs rather than defaulting to only technology-based ones.

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On page 27 (D) it is indicated that LDEQ proposes to automatically permit stormwater discharges of facilities that get this GP. Then the facility has 60 days to submit a SWPPP which is supposed to demonstrate that WQSs will be met. Under what guidelines and authority does LDEQ propose to automatically issue the stormwater permit without first reviewing the SWPPP?

How will LDEQ determine whether there will be an environmental risk that merits excluding a discharge? See page 4 part (8). Just how will LDEQ analyze and quantify potential environmental impacts to the receiving waterways?

Lack of Opportunity for Public participation

1. Public Comment Process Needs Attention

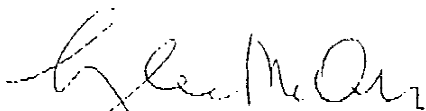
As has often been the case with permits submitted to LDEQ, there does not follow a sufficient public comment process complete with public scoping and a public comment process followed by an open meeting or hearing to discuss, address and review the comments submitted. We hereby request an improved public comment process for any future general permits and a public hearing to clarify the issues raised in LEAN's comments to permit LA0480000.

Conclusion

For these reasons and others, LEAN hereby objects to the issuance of this general permit and formally requests an in-depth public hearing to fully and adequately address all of our concerns expressed herein.

Thank you for giving these concerns your attention.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marylee M. Orr".

Marylee M. Orr

Executive Director

Louisiana Environmental Action Network

2006 JUN 19 PM 1:04



TULANE ENVIRONMENTAL LAW CLINIC

COPY

original to IOW
 EP copy to PC / Ghosh
MFG / G1 / Gauthier
 General 20060001
 Pub. date 5/4/06 +
 5/11/06

June 19, 2006

Via fax: (225) 219-3309 & e-mail(maillistrequest@ldeq.org) & U.S. Mail

Louisiana Department of Environmental Quality
 ATTN: Ms. Soumaya Ghosh
 Public Participation Group
 P.O. Box 4313
 Baton Rouge, LA 70821-4313

Re: Comments on Draft General Permit for Discharges from Light
 Commercial Facilities (AI 84683)

Dear Ms. Ghosh:

Thank you for the opportunity to submit the following comments on behalf of Louisiana Environmental Action Network (LEAN)¹ on LDEQ's draft general permit for light commercial facilities.

1. A General Permit is Inappropriate for Discharges that Require Extensive Analysis.

In general, the purpose of a general permit is to carve out specific types of activities which, because they have an insignificant impact on the environment, do not merit detailed review and thus need not undergo individualized permit review. LDEQ's draft General Permit, however, would apply to discharges that require extensive individual analysis of appropriate effluent limits under federal law, thus negating any benefit of aggregating them into coverage under a general permit. It is therefore unclear how the

¹ LEAN is a non-profit corporation organized under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN's purpose is to preserve and protect the state's land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. LEAN has members statewide, including members who live, work, or recreate in the project area.

Ms. Soumaya Ghosn, Comments on Draft General Permit
June 19, 2006
Page 2 of 3

proposed permit will streamline the review process if LDEQ will be required to review each Notice of Intent and to determine how the water quality of the proposed receiving waterbody will be affected.

Furthermore, it is unclear how LDEQ will determine whether a proposed discharge presents such an environmental risk that it merits being excluded from coverage by the general permit. How will such potential environmental risks be analyzed and quantified?

2. LDEQ must perform additional analysis on the proposed General Permit.

The Louisiana Constitution requires LDEQ, as public trustee, to analyze the environmental impacts of the proposed General Permit. The Louisiana Constitution states that "[t]he natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people." La. Const. art. IX, § 9. The Louisiana Supreme Court found that this constitutional provision "requires an agency or official, before granting approval of [the] proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistent[] with the public welfare." *Save Ourselves, Inc. v. Louisiana Envtl. Control Comm'n*, 452 So. 2d 1152, 1157 (La. 1984). The court explained that LDEQ must "use *a systematic, interdisciplinary approach* to evaluation of each . . . project In determining whether the proposed project fully minimizes adverse environmental effects, the [agency] necessarily must consider whether alternate projects, alternate sites, or mitigation measures would offer more protection for the environment than the project as proposed without unduly curtailing non-environmental benefits." *Id.* (emphasis added).

LDEQ's environmental assessment must demonstrate that the proposed permit does not have a reasonable potential to adversely affect the quality of state waters.

LDEQ must demonstrate how it will track the cumulative impacts of discharges that the General Permit authorizes and how it will measure these discharges' cumulative effects on receiving water bodies.

LDEQ's environmental assessment must demonstrate that it has based the draft permit's effluent limitations on scientific analysis. To the extent that LDEQ relies on "best professional judgment" to set effluent limitations, LDEQ must specify the basis for, and all data supporting, that judgment.

The proposed permit makes several blanket statements with no justification, e.g., that effluent limitations are sufficient to protect state waters, that water quality standards will not be violated, that discharges under the permit will not impact 303(d)-listed waters, and that the permit will protect designated uses. LDEQ's environmental assessment must specify the grounds for these assertions and show how LDEQ has determined that the general permit will comply with the Clean Water Act.

The permit also states, without justification, that the current general permit for discharges from light commercial facilities has not resulted in any degradation of state waters. LDEQ's environmental assessment must provide the basis for this LDEQ determination.

Ms. Soumaya Ghosn, Comments on Draft General Permit
 June 19, 2006
 Page 3 of 3

Consistent with LDEQ's duties as public trustee, the LDEQ must perform a full Tier 1 and Tier 2 anti-degradation analysis. Further, the permit must be limited so that it will not allow, through individual or cumulative activities, pollution that has not been shown to be insignificant. Similarly, "Outstanding Natural Resource Waters" and "303(d)-listed waters," which require special consideration and analysis, should be excluded from the list of eligible receiving streams.

3. LDEQ must place conditions in the permit to ensure that there will not be significant pollution from permitted activities.

The draft General Permit lacks sufficient conditions to ensure protection of receiving streams' water quality.

4. Request for a Public Hearing

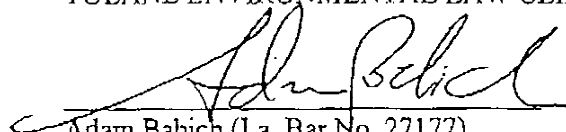
On behalf of LEAN, we request a public hearing to clarify the points discussed above, and any other concerns that may arise.

Conclusion

LEAN objects to the issuance of the General Permit until and unless LDEQ adequately addresses LEAN's comments. Again, thank you for this opportunity to participate in the state's water quality protection process.

Respectfully submitted this 19th day of June, 2006,

TULANE ENVIRONMENTAL LAW CLINIC



Adam Babich (La. Bar No. 27177)
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 Network
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